

STATE OF VERMONT
HUMAN SERVICES BOARD

In re) Fair Hearing No. 8959
)
Appeal of)

INTRODUCTION

The petitioner appeals the decision by the Department of Social Welfare denying her application for General Assistance (G.A.) or Emergency Assistance (E.A.). The issue is whether the petitioner faces a "catastrophic situation" as defined by the pertinent regulations.

FINDINGS OF FACT

The petitioner, an ANFC recipient, applied for G.A.(E.A.) on December 29, 1988, alleging that she had until January 15, 1989 to pay deposits of \$90 each to keep her gas and electric utilities turned on. The petitioner alleges that when she and her children moved into her present apartment (which is "Section 8" subsidized) in August, 1988, she agreed with her landlord to put the gas and electric utilities (which were then in her landlord's name) into her name within a month's time. Because she was short of cash, however, she was unable to raise the \$90 each utility demanded as a deposit before it placed the service in the petitioner's name.

Since August, her landlord has kept the utilities in his name. He has presented each month's bills to the petitioner and she has paid him these amounts over and above

her rent. To date, she has paid her landlord all her rent and the utilities in full. The petitioner alleges, however, that her landlord has now given her until January 15, 1989 to have the utilities placed in her name, or he will have them disconnected.

Before formally convening the hearing in this matter the hearing officer discussed the above allegations with the petitioner (who appeared pro se) and with representatives of the Department. Because it did not appear to him that the petitioner was powerless either to negotiate with her landlord and the utility company over the continuation of her utility services or to seek legal help in averting a shut-off of her utilities, the hearing officer advised the petitioner that he could not order the Department in the context of an "expedited" G.A. hearing (see Procedures Manual @ P-2610D) to grant her G.A. at this time. When informed of this, the petitioner indignantly left the hearing room. Before she left, however, the hearing officer advised the petitioner (who appeared to be an intelligent and assertive individual, and who stated she was familiar with the services of Vermont Legal Aid) that under the G.A. regulations she had a duty to take reasonable steps to avoid or delay the interruption of her utility service before she could claim any entitlement to G.A. (see ¹infra).

ORDER

The Department's decision is affirmed.

REASONS

Because the petitioner is a regular ANFC recipient she is eligible for G.A. (or E.A.) only if she faces a "catastrophic situation" as defined in the regulations. Of the circumstances listed in W.A.M. § 2602 (and § 2802) only a "constructive eviction" would appear to apply to the petitioner's situation.² W.A.M. § 2602.1 (and § 2802.1) defines a "constructive eviction" as follows:

2602.1 Constructive Eviction Defined

"Constructive eviction is defined as any disturbance caused by a landlord or someone acting on his behalf, which makes the premises unfit for occupation. The motive for the disturbance, which may be inferred from the act, must have as its intent the eviction of the occupant. No intent needs to be considered when heat or utilities or water are not provided within a reasonable period of time and there is an agreement to furnish these items."

In this case, although the petitioner alleged that her landlord will shut off her utilities on January 15th, it was clear that the petitioner was far from having exhausted both negotiations and legal remedies available to her to avert this scenario. The Department need not furnish G.A. under § 2602 (or E.A. under 2802) whenever there is a threat of a constructive eviction. In such cases, it is the petitioner's burden of proof to at least establish the sincerity of such threats, the reasonable likelihood that they will be acted upon, and that the petitioner cannot reasonably avoid the threatened harm. On the day in

question it was clear that the petitioner could not meet this burden. The Department's decision is, therefore, affirmed.

FOOTNOTES

¹The hearing officer went so far as to advise the petitioner that, in his opinion, it would be unlawful for the landlord to have her utilities shut off. He specifically advised her to seek legal help in either negotiating with the housing authority and her landlord to revise her lease terms, negotiating with the utility companies to forego or accept partial payment of a deposit, or legally enjoining the landlord from terminating her gas and electric service. The petitioner was also advised that if she did nothing (i.e., if she took no action on her own behalf to prevent her utilities from being shut off) any further application G.A. or E.A. (even after her utilities are shut off) may also be denied.

²The other defined "catastrophes" are death of a spouse or minor child, a natural disaster, or an emergency medical need. Although the disconnection of heat in winter could well pose a medical threat to the petitioner and her children, by the same reasoning as is applied herein to "constructive eviction", the petitioner is obligated to take reasonable steps to avert that threat without resorting to G.A. or E.A.

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